



The Commonwealth of Massachusetts

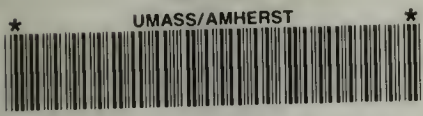
Executive Office for Administration and Finance

Designer Selection Board

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Chair

GEORGE R. BEATON, P.E.
Executive Director

TO: Cities and Towns

FROM: George R. Beaton, P.E.
Executive Director
Designer Selection Board

DATE: March 21, 1991

RE: Designer Selection Guidelines - Cities and Towns
(Includes 1990 Statutory Revisions)

C7 Section 38K of the General Laws includes the following provisions:

- (b) *The board shall publish guidelines to assist public agencies not within the board's jurisdiction in the establishment of a professional and objective designer selection procedure, including a model application form, consistent with the provisions and intent of sections thirty-eight A 1/2 to thirty-eight O, inclusive.*
- (c) *Any city, town or other public agency not otherwise subject to the jurisdiction of the board may request the board to exercise jurisdiction regarding the selection of applicants to perform design services for a specified period of time or for a specified project. In such cases, all provisions of sections thirty-eight A 1/2 to thirty-eight O, inclusive, shall apply to the board, the applicants and the public agency so requesting.*

The DSB has previously published "Designer Selection Guidelines" with the last revision dated February 15, 1990. Several recently passed legislative acts revise the law concerning selection of designers on building projects, and these guidelines are intended to bring local designer selection procedures into conformance with the new statutory revisions.

The designer selection procedure that each city and town adopts must comply with the purposes and intent of the State Designer Selection Board law, Chapter 7, section 38A 1/2 thru 38 O. Selection procedures must be open to public scrutiny, and therefore all meetings are subject to the open meeting law (G.L. c39 s23 A to s23 C). It should encourage architects and engineers to compete for public work. At a minimum, it must contain the following four specific provisions:

- 1) Newspaper and central register advertising;
- 2) Uniform application form and evaluation procedure;
- 3) Public written explanation of reasons for selection; and
- 4) Lump sum fees

Cities and towns are advised to obtain the latest document entitled "**DESIGNING AND CONSTRUCTING MUNICIPAL FACILITIES, LEGAL REQUIREMENTS, RECOMMENDED PRACTICES, SOURCES OF ASSISTANCE**", dated October 1989, issued by the Office of the Inspector General, which can also be purchased at the State Bookstore, Room 116, State House, Boston, MA 02133, Phone #(617) 727-2834. This publication covers the entire process of constructing municipal facilities and is highly recommended. Therefore, these guidelines will cover only specific legal requirements as interpreted by the DSB.

It should also be noted that C7 s38L requires public agencies to keep the following records:

1. all information supplied or obtained about each applicant;
2. all actions taken by the board or agency (including municipalities) relating to any project.
3. any other records related to designer selection required by the division (Division of Capital Planning and Operations).

In addition, *"The records of public agencies exempted under section thirty-eight C or not otherwise subject to the jurisdiction of the board shall be available for inspection by the board or the division."*

On building projects, designers are required to carry professional liability insurance. Liability insurance is not required for the preparation of studies, surveys, soil testing, cost estimates, programs, or for construction management or scheduling. Copies of the DCPO Standard Contracts for these services are available at the Division of Capital Planning and Operations Headquarters, 15th. Floor, One Ashburton Place, Boston, MA 02108. You may use these standard contracts or modify them in any way you find helpful.

Our purpose is to help municipalities establish a professional and objective procedure which will carry out the purposes of the designer selection statute, and secure the highest quality design services for all public building projects. Municipalities may also wish to utilize the services of the Designer Selection Board as provided by the aforementioned statute. However, municipalities should contact this office prior to making a formal request, as State projects have priority, and current DSB workloads may preclude action in conformance with schedules established by municipalities for their respective projects.

There have been several significant revisions made to Chapter 7 of the General Laws that will partially alleviate the obligations of cities and towns to follow detailed designer selection procedures, including the following:

1. *Public works projects which are bid under Chapter 30, section 39M are still exempt from the designer selection statute as are all projects involving the design of sewer, highway and water systems (see G.L. Chapter 7, section 39A [g 1/2]) .*

N.B. On January 12, 1990, the Attorney General issued an opinion relative to the Central Artery/Third Harbor Tunnel project. The opinion held that the procurement of design services for "parcel 7" (a portion of the project) was exempt from DSB jurisdiction pursuant to section 39A (g 1/2). His opinion also included footnote 7 on page eight as follows:

"7/ The original chapter 579 legislation had limited the exemption to buildings 'required to be constructed as integral parts of the development of sewer, water, and highway systems by a state agency.' St. 1980, c. 579, §7 (emphasis added). The exemption, as amended, is no longer limited to state agencies and therefore includes municipal, county, and other public agency projects. St. 1984, c 484, §7."

In the view of the Attorney General, a municipality falls squarely within the section 39A (g 1/2) exemption. Although the footnote is ancillary to the decision as a whole, it clearly arises out of the discussions relating to the exemption and should be given due consideration. A decision from the Supreme Judicial Court, dated September 16, 1977, (Feeney vs. Commonwealth, 373 Mass. 359) has declared that the Attorney General is the chief law officer of the Commonwealth, and therefore the Designer Selection Board concurs that his opinion takes precedence over previous interpretations by state agencies.

2. Section 1 of Chapter 687 of the Acts of 1989, which takes effect on May 1, 1990, revised C7 s38K to read as follows:
 - a) *Every contract for design services for any building construction, reconstruction, alteration, remodeling, or repair estimated to exceed one hundred thousand dollars by any city, town, or agency, board, commission, authority or instrumentality thereof, other than housing authorities shall be awarded only after a selection procedure adopted in writing, prior to publication requesting applications, complying with the purposes and intent of sections thirty-eight A 1/2 to thirty-eight O, inclusive, and the following requirements:*
3. *A designer or programmer appointed to do a feasibility study, master plan or program for a project shall be ineligible for appointment to perform the design services for that project. This paragraph shall not apply to designers performing studies for repair work; provided, however, that such work is limited to identifying and correcting existing deficiencies in a portion of a building or its equipment; and provided, further, that the designer's fee for the combined study and design of repairs is ~~not greater than twenty-five~~ less than one hundred thousand dollars. [C7 s38H(d)]. (See Chapter 150 of 1990, Section 216 for exact language)*
4. *Awarding authorities in cities and towns may allow a designer who conducted a feasibility study to continue with the design of a project, provided that they shall commission an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility designer's work to insure its reasonableness and its adequacy prior to allowing such a designer to continue on said project. [Paragraph (j) added by 1986, C688 effective April 7, 1987] [C7 s38H(d)]*
5. Chapter 210 of the Acts of 1988 authorizes the procurement of modular buildings by public agencies. Section 1B of this act revises Chapter 7 Section 38C of the General Laws by exempting the procurement of modular buildings from the designer selection statutes, as follows: *"A contract for the fabrication or installation of modular buildings procured in accordance with the provisions of section forty-four E of chapter one hundred and forty-nine shall be exempt from the jurisdiction of the board."*

Awarding authorities are directed to Chapter 6 of the Inspector General's manual if modular buildings are to be procured.

N.B. The Inspector General's manual includes the following paragraph:

Modular buildings must be procured by following the statutory procedures set forth in G.L. c.149, s44E. The designer selection statute does not apply to contracts for the fabrication and installation of modular buildings, which must be awarded according to the proposal procedures discussed in chapter 6 of this manual. The designer selection law does apply to the award of contracts for feasibility or other studies, surveys, tests, cost estimates, programs, or other design services needed to plan a modular building project."

In addition to revising the attached "**Guidelines for Local Designer Selection Procedures**" to include provisions recently enacted by the Legislature, we have included "**Regulation 811 CMR 3.00 Expedited Procedure for Selection of Designers When an Emergency Situation Exists.**" This regulation was specifically adopted for emergency projects encountered by the Division of Capital Planning and Operations. However, local awarding authorities may find it desirable to adopt similar emergency designer selection procedures after proper substitution of respective local officials in lieu of state officials.

Also attached for your convenience is a model application form that cities and towns may utilize as the required uniform application form. Although questions on the above material may be directed to this office, it should be noted that C808 of the Acts of 1985 grants jurisdiction over the Commonwealth's designer selection laws to The Department of Labor and Industries (DLI). DLI has the power to investigate grievances and complaints and to initiate enforcement proceedings in court.

The DSB hopes this information and the attached **Guidelines** will assist your city or town in complying with the new statutory procedures for designer selection.

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES

*See definitions, C7 ^S38A 1/2 & 39A

The Designer Selection Board is authorized, under the provisions of G.L., Chapter 7, section 38K, to develop guidelines for the designer selection procedures to be adopted by cities and towns throughout the Commonwealth. These procedures are to apply to the selection of designers on building construction, renovation, alteration, remodeling and repair projects, the estimated cost of which exceeds one hundred thousand dollars. For those projects without an associated estimated construction cost, including but not limited to feasibility studies, projects are exempt from these procedures if the cost of the design service is less than ten thousand dollars. These procedures do not apply to the selection of designers for modular buildings, public works projects bid under provisions of Chapter 30, section 39M and projects that are integral parts of the development of sewer, water and highway systems. See the definition of "building project"* if there is a question whether a particular project is a building project subject to these guidelines.

The Designer Selection Board recommends the following procedures:

1. The awarding authority that will award and administer the design contract will determine the nature and extent of the design services* required for the project and will develop the project criteria required under #3 below.
2. A committee will be appointed by the awarding authority to evaluate proposals and select the finalists. The committee should include one or more public members; and preferably, professional members (architects and engineers) who may be in-house staff or members of the general public. (The Inspector General has stated that the use of a committee is not required at the local level, although he does recommend its use for larger projects, such as those costing \$100,000 or more.)
3. A request for proposals (RFP) for each contract for designer services for a project subject to the jurisdiction of the committee* shall be publicly advertised by the committee in a newspaper of general circulation in the area in which the project is located or to be located, and in the Central Register established under Chapter 9, section 20A, and in such places as the committee requires, at least two weeks before the deadline for filing applications. Projects of less than \$100,000 ECC or for a design fee of less than \$10,000 do not require advertising under these procedures.
4. The RFP will provide the following detailed information:

NOTE: State law requires a registered architect to prepare plans and specifications involving any building whose size exceeds 35,000 cubic feet.

- a) a description of the project, the specific designer services sought, the estimated construction cost, and the time allotted for completion, if known;
- b) when and where the program prepared for the project will be available for inspection by applicants, or a statement that there is no program beyond the information in (a) above;
- c) the qualifications required of applicants for the project;
- d) the categories of designers' consultants, if any, for which applicants must list consultants they intend to use;
- e) whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the RFP as a total dollar amount, not a

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES (CONTINUED)

percentage. If the fee is to be negotiated, the awarding authority shall establish a not-to-exceed amount prior to negotiations, but need not publish it in the RFP's.

N.B. Designers shall be reviewed and ranked on the basis of qualifications, not on the basis of fee proposals. The receipt of competitive fee proposals prior to the ranking of finalists appears contrary to the statutory provisions governing both the criteria for selecting designers and the method for determining the appropriate amount of a design fee. The public agency remains under an obligation to attempt to negotiate a satisfactory design fee with the first ranked designer before proceeding to negotiate with the next highest ranked designer.

The Ward Commission's Final Report concluded that the receipt of competitive fee proposals was not in the overall public interest. In a recent publication, the Inspector General adopted the position that public agencies are prohibited from receiving competitive fee proposals from designers. (See "Designing and Constructing Municipal Facilities dated October 1989".)

- f) the deadline for the submission of proposals;
 - g) the person and address to which proposals should be sent;
 - h) any other pertinent information.
5. The selection of finalists will be based on the following criteria:
- a) prior similar experience;
 - b) past performance on public and private projects;
 - c) financial stability;
 - d) identity and qualifications of the consultants who will work with the applicant on the project, including professional registration when required; and
 - e) any other criteria that the committee considers relevant for the project.
6. Applicants may be required to:
- a) appear for an interview before the committee;
 - b) present a written proposal to the committee; or
 - c) participate in a design competition held by the committee.
7. When the committee has required that the applicants list consultants which they intend to use, any changes in, or addition to, consultants named in the application must be approved by the awarding authority and reported to the committee with a written statement by the designer or construction manager of the reasons for the change. No person or firm debarred pursuant to Chapter 149, section 44C or disqualified pursuant to Chapter 7, section 38F(c) or 38H(g) shall be so included as a finalist.
8. The committee will select at least three finalists from among all applicants and transmit the list to the awarding authority. The list will rank the finalists in order

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES (CONTINUED)

of qualification, provide a record of the final vote of the committee on the selection, and include a written statement explaining the committee's reasons for its choice and its ranking of the finalists. The list will be a public record. The committee shall transmit to the awarding authority all material made or received relating to such recommendation.

9. If the fee for design services has been set by the awarding authority prior to the selection process, the awarding authority will select the designer to be awarded the contract from the list submitted by the committee. If a designer other than the one ranked first is selected, the awarding authority shall file a written justification with the committee.

If the fee is to be negotiated, the awarding authority shall review the list transmitted by the committee, and may exclude any designer from the list with a written explanation of the exclusion. The awarding authority shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank. In no event may a fee be negotiated which is higher than a maximum fee set by the awarding authority prior to selection of finalists. Should the awarding authority be unable to negotiate a satisfactory fee with any designer initially selected as a finalist by the committee, the committee shall recommend additional finalists in accordance with the statutes.

10. The design contract shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope of services.
11. A designer or programmer appointed to do a feasibility study, master plan or program for a project shall be ineligible for appointment to perform the design services for that project. This paragraph shall not apply to designers performing studies for repair work; provided, first, that such work is limited to identifying and correcting existing deficiencies in a portion of a building or its equipment; and second, that the designer's fee for the combined study and design of repairs is not greater than ~~twenty-five~~ less than one hundred thousand dollars. (Revised Chapter 150 of 1990, Section 216)

Awarding Authorities in cities and towns may allow a designer who conducted a feasibility study to continue with the design of a project, if the authority commission(s) an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility designer's work to insure its reasonableness and its adequacy prior to allowing the designer to continue on said project. The review of a state agency with oversight or approval of a project may be sufficient for the purposes of this paragraph.

12. Every contract awarded for design services shall include:
 - a) certification that the designer or construction manager has not given, offered, or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of a contract for design services;
 - b) certification that no consultant to, or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES (CONTINUED)

connection with the award to the consultant or subcontractor of a contract by the designer or construction manager;

- c) certification that no person, corporation or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
- d) certification with respect to contracts which exceed ten thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the designer has internal accounting controls as required by Chapter 30, section 39R, and that the designer will:
 - (1) maintain accurate and detailed accounts for a six year period after the final payment;
 - (2) file regular statements of management concerning internal auditing controls;
 - (3) file an annual audited financial statement; and
 - (4) submit a statement from an independent certified public accountant that such CPA (or public accountant) has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (2) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements, Chapter 7, section 38H(e).
- e) a requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of such contracts for design services. The awarding authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a similar liability insurance policy. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the public agency may require, and shall cover the applicable period of limitations. A designer required by the public agency to obtain all or a portion of such insurance coverage at his own expense shall furnish a certificate or certificates of insurance coverage to the public agency prior to the award of the contract. For the purpose of this paragraph only, "public agency" shall have the meaning set forth in section thirty-nine A. **(Includes cities and towns and any instrumentality thereof)**
- f) contracts for design services shall include a provision that the designer or his consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as

GUIDELINES FOR LOCAL DESIGNER SELECTION PROCEDURES (CONTINUED)

reasonably determined by the executive head of the public agency responsible for administering the design contract. For the purpose of this paragraph, "public agency" shall have the meaning as set forth in section thirty-nine A. (Includes cities and towns and any instrumentality thereof)

- g) any person contracting with a municipality must certify in writing that he or she has complied with State tax laws, (G.L. c. 62C, s49A), and the name of the designer awarded the contract must be published in the Central Register. The awarding authority may request a copy of the Division of Capital Planning and Operations' Standard Design Contract to use as is or modify. Contracts for design services may include a requirement that the designer be responsible for overseeing the construction phase of the project.

- 13. In the selection of applicants to perform design services, the following records will be kept by the awarding authority:

- a) all information supplied by or obtained about each applicant;
- b) all actions taken by the committee relating to any project;
- c) all actions taken by the awarding authority relating to any project.

These records will be available for inspection by the State Designer Selection Board and other authorized agencies.

- N.B. All meetings of a government body shall be open to the public and any person shall be permitted to attend any meeting as otherwise provided by G.L. 30H, section 11A 1/2.

- 14. No member of the committee shall participate in the selection of a designer as a finalist for any project if the member of his or her immediate family:

- a) has a direct or indirect financial interest in the award of the design contract to any applicant;
- b) is currently employed by, or is a consultant to or under contract to an applicant;
- c) is negotiating or has an arrangement concerning future employment or contracting with any applicant; or;
- d) has ownership interest in, or is an officer or director of, any applicant.

- 15. When an emergency situation exists, Cities and Towns may utilize "Regulation 811 CMR 3.00 Expedited Procedure for Selection of Designers When an Emergency Situation Exists", as adapted to local requirements including the substitution of the terms "Designer Selection Board" and "Deputy Commissioner of DCPO" with "City or Town Selection Committee" and "Local Awarding Authority" respectively.

The recommended procedures above may be amended or modified so long as the procedures adopted satisfy the purpose and intent of Chapter 7, section 38A 1/2 to 38 O, and requires newspaper and Central Register advertising, a uniform application form, uniform evaluation procedure, public written explanation of the reasons for designer selection, and lump sum fees.



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7:38A ½. Design Services for Public Buildings; Definitions.

Section 38A ½. (a) Sections thirty-eight A ½ to thirty-eight O, inclusive, shall: ensure that the commonwealth receives the highest quality design services for all its public building projects; provide for increased confidence in the procedures followed in the procurement of design and design related services; promote consistency in the methods of procurement of design and design related services for all public building projects in the commonwealth; foster effective broad-based participation in public work within the design professions; provide safeguards for the maintenance of the integrity of the system for procurement of designers' services within the commonwealth;

(b) All words defined by section thirty-nine A which appear herein shall have the meanings set forth in said section thirty-nine A. The words defined in this section shall have the meanings set forth below whenever they appear in sections thirty-eight A ½ to thirty-eight O, inclusive, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section or provision.

"Designer", an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:

(i) if an individual, the individual is a registered architect, landscape architect, or engineer;

(ii) if a partnership, a majority of all the partners are persons who are registered architects, landscape architects, or engineers;

(iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person to have the project in his or her charge is registered in the discipline required for the project;

(iv) if a joint venture, each joint venturer satisfies the requirements of this section.

"Programmer", any designer or any other individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the preparation of architectural facility programs or studies.

"Construction manager", any designer or any other corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of construction management or construction scheduling.

"Design services", any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

(i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

(ii) preparation of drawings, plans, or specifications, including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;

(iii) supervision or administration of a construction contract;

(iv) construction management or scheduling.

"Applicant", any person or entity applying to perform design services. the principal personnel responsible for the provision of such services for the project, and the persons who will be the principal staff for the project.

"Public agency", a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth or two or more subdivisions thereof other than cities and towns, and any agency, unit, authority, or instrumentality thereof.

"Director", the director of the office of project management, or in the case of agencies subject to the provisions of section four B of this chapter, the chief executive official of the agency or his/her designee.

"Deputy commissioner" and "Division", the deputy commissioner and the division of capital planning and operations.

"Board", the designer selection board.

"Continued services", authorization for a designer who has been appointed for one stage of a project to act as the designer for a succeeding stage or stages of the same project.

"Extended services", authorization for a designer who has been appointed to provide design services for a project to act as designer for work to be done on another project not originally included in that designer's contract.

7:39A. Definitions.

Section 39A. As used in this chapter and chapter twenty-nine of the General Laws, the following words and terms shall have the following meanings, unless the context shall clearly indicate a different meaning or intent:

(a) "acquisition", obtaining by gift, purchase, devise, grant, eminent domain, rental, rental-purchase, or otherwise;

(b) "addition, expansion and extension", work which will result in an increase in the overall external dimension of a facility;

(c) "administering agency", the public agency acting on behalf of a using agency;

(d) "alteration", work required to modify or adjust the interior space arrangement or other physical characteristics of an existing facility so that it may be more effectively utilized for its presently designated functional purpose;

(e) "building authority", the University of Massachusetts Building Authority, the Southeastern Massachusetts University Building Authority, the University of Lowell Building Authority, or the Massachusetts State College Building Authority or any other building authority which may be established for similar purposes;

(f) "capital facility", a public improvement such as a building or other structure; a utility, fire protection, and other major system and facility; a power plant facility and appurtenances; a heating, ventilating, air conditioning or other system; initial equipment and furnishings for a new building or building added to or remodeled for some other use; a public parking facility; an airport or port facility; a water resource improvement by the metropolitan district commission such as a waste water treatment and related pollution control facility, solid waste disposal or recovery facility; a recreational improvement such as a facility or development in a park or other recreational facility; or any other facility which, by statute or under standards as they may be prescribed from time to time by the deputy commissioner of capital planning and operations, according to the provisions of this section, may be defined as such, provided however that a highway improvement such as a highway, bridge or tunnel; a transportation improvement such as a mass transportation or other public transit facility, but not including a department of transportation building in the Park Square area of the city of Boston, shall not be considered a capital facility as defined herein;

(g) "capital facility project", an undertaking by a public agency for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility.	38 39 40
(g ^{1/2}) "building project", a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided, however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water and highway systems shall not be subject to section thirty-eight C.	41 42 43 44 45 46 47
(h) "construction", new construction, alteration, renovation, rehabilitation or other activity that is intended to result in a significant increase in internal usable space;	48 49 50
(i) "control and supervision", authority to perform or contract for performance;	51 52
(j) "conversion", work required to modify or adjust the interior space arrangement or other physical characteristics of an existing facility so that it may be effectively utilized for a new functional purpose;	53 54 55
(k) "energy audit", in-depth engineering analysis of factors causing energy waste in building that investigates the amount and cost of energy waste and compares the energy waste with the expense of remedying the energy waste on a cost-effective basis;	56 57 58 59
(l) "energy conservation projects", projects to promote energy conservation, including but not limited to energy conserving modification to windows and doors; caulking and weatherstripping; insulation, automatic energy control systems; hot water systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and, cogeneration systems;	60 61 62 63 64 65 66 67 68
(m) "maintenance", day-to-day, routine, normally recurring repairs and upkeep;	69 70
(n) "master plan", a study or description of a complex or group of buildings or any large or multi-faceted project which is intended to ensure that the various components of the complex shall be compatible with each other, and that the project as a whole shall be compatible with its surroundings;	71 72 73 74 75
(o) "oversight", control and supervision, except for final approval of any contract, pre-design or design document or any alteration or modification thereof, payment, certificate of substantial completion, use and occupancy, or final acceptance;	76 77 78 79
(p) "planning", in reference to a particular capital facility project, the preparation of a master plan, study, program or similar report or analysis the purpose of which is to define the content, cost, and schedule of the project so as to establish a frame of reference prior to design, acquisition, construction, demolition, installation, or maintenance;	80 81 82 83 84
(q) "program", a document which defines a capital facility project in terms of its content, time, and cost so that it provides a clear and detailed frame of reference for the design and implementation process, the preparation of such document involving the gathering of data and the analysis of cost necessary to (i) the production of content, time and cost plans based on criteria deriving from those originally defined by any study or similar report and as finally stated within the body of the program itself and (ii) the evaluation of those plans in terms of such criteria;	85 86 87 88 89 90 91 92

(r) "public agency", a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth or two or more subdivisions thereof;	93 94 95
(s) "real property", land, buildings, appurtenant structures and fixtures attached to buildings or land, including where applicable, all interests in real property, whether created by title, lease, easement or any other legal interest;	96 97 98 99
(t) "renovation", work required to restore and modernize most or all of a facility in order that the facility may be effectively utilized for its designated functional purpose or to comply with current code requirements;	100 101 102 103
(u) "repair", work required to restore a facility or system to such condition that it may continue to be approximately and effectively utilized for its designated purpose by overhaul, reprocessing or replacement of constituent parts or materials which have deteriorated by action of the elements or wear and tear in use;	104 105 106 107 108
(v) "state agency", a state agency, board, bureau, department, division, section, or commission of the commonwealth or county; provided, however, that in sections forty E to forty L, inclusive, state agency shall not include counties.	109 110 111 112
(w) "study", a feasibility or other study to identify and evaluate alternative solutions to and recommend a solution to the needs and requirements defined by the public agency proposing a capital facility project which may involve a further definition of that agency's needs and requirements, gather additional information on the nature of the project, develop and review potential solutions to those needs and requirements, evaluate the financial, environmental, and other aspects of such solutions, estimate the degree to which solutions do not fulfill proposed objectives and criteria, and recommend a means of project implementation and site acquisition;	113 114 115 116 117 118 119 120 121 122
(x) "using agency", the public agency which will be the major user of a capital facility project or the occupant of a building project;	123 124
(y) "utility systems projects", installation, extension or replacement of systems for the provision of sewer, water and electrical service, power plant facilities and appurtenances, heating, ventilating and air conditioning, elevators, fire escapes, sprinklers and automatic fire alarms and telephone communications;	125 126 127 128 129
The deputy commissioner of capital planning and operations, after review by interested public agencies who may seek to initiate capital facility projects, shall establish standards as to what shall constitute a capital facility and what shall be a capital expenditure for the purpose of defining what shall constitute a capital facility project.	130 131 132 133 134

Chapter 210 of the Acts of 1988

"Modular Building", a pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more section and affixed to a foundation and connected to external utilities.

"Procurement", buying, purchasing, or otherwise acquiring and installing a modular building, and all functions that pertain to the acquisition and installation of a modular building, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

811 CMR 3.00: EXPEDITED PROCEDURE FOR SELECTION OF DESIGNERS WHEN AN EMERGENCY SITUATION EXISTS

Section

- 3.01: Scope and Purpose
- 3.02: Definitions
- 3.03: Declaration of Emergency
- 3.04: Studies, Programs and Design and Administration of Construction Projects
- 3.05: Voting by DSB Members for Selection in an Emergency Situation

3.01: Scope and Purpose

811 CMR 3.00 establishes a speedy procedure by which the Designer Selection Board can select a designer, programmer or construction manager, when an emergency situation exists.

3.02: Definitions

As used in 811 CMR 3.00 the following terms shall have the meanings set forth, unless otherwise prescribed by statute:

Board or DSB - the State Designer Selection Board.

Deputy Commissioner - the Deputy Commissioner of the Division of Capital Planning and Operations.

3.03: Declaration of Emergency

- (1) The declaration will be made by the Deputy Commissioner, based upon one of the following criteria.
 - (a) Danger to health or safety of any persons because of the time required for selection of a designer by the regular statutory process.
 - (b) Deadline for action on a project set by a court or federal agency which cannot be met if the regular statutory process is followed.
- (2) The Deputy Commissioner will file a memorandum with the Board, stating the reasons for the emergency declaration, listing proposed scope of work, estimated cost of construction, the established lump sum fee for designers' services, and any other relevant information.
- (3) Upon receipt of the memorandum from the Deputy Commissioner, the Board may elect to follow the expedited procedures set forth in 811 CMR 3.04 and 3.05.

3.04: Studies, Programs and Design and Administration of Construction Projects

- (1) If the scope of work involves a study or program, finalists may be selected from the existing standing list of consultants who have previously applied to the Board for projects of this nature as advertised in Public Notices as Item 2, or from applicants who have filed a master file brochure with the Board, without public advertising.
- (2) If the scope of the work involves design and administration of a construction project, finalists may be selected from the existing standing list of consultants who have previously applied to the DSB for projects as advertised in Public Notices as Item 1, or from applicants who have filed a master file brochure with the Board, without public advertising.
- (3) The Chairman of the DSB, or in his absence, the Vice Chairman or senior DSB member, upon receipt of the declaration by the Deputy Commissioner that an emergency exists; will select at least six (6) semi-finalists as described in 811 CMR 3.04(1) and (2) above..

3.05: Voting by DSB Members for Selection in an Emergency Situation

- (1) The Executive Director of the DSB shall compile the above information into

3.05: continued

a package for distribution and action by all the DSB members. Material shall be mailed if time permits. When possible, selection shall be made at the next scheduled meeting. When time or other circumstances do not permit, members may respond by mail.

(2) In those cases where the Chairman or in his absence the Vice Chairman or senior DSB member determines that immediate action is required, on the basis of an immediate threat to health and safety, that person shall nominate at least six (6) semi-finalists for the specific project to be acted on. Said Board member may direct the Executive Director to poll all available DSB members by phone and record their vote, tabulate the results, and forward the names of the three (3) or more finalists to the Deputy Commissioner for his appointment in accordance with M.G.L. c. 7, ss. 38F and 38G.

(3) The tabulation of the vote by DSB members for the three (3) or more finalists to be submitted to the Deputy Commissioner shall be accomplished by crediting the designated point count of each member's vote to the firm so selected by each respective member. Every firm ranked first (1st) will be credited with three (3) points, the second (2nd) ranked firm will be credited with two (2) points and third (3rd) ranked finalist will obtain one (1) point. The firm obtaining the highest cumulative total of points will be ranked first (1st), the next higher total will be ranked second (2nd) and the third (3rd) highest total point count will be ranked third (3rd). All additional recommended finalists shall receive zero points.

(4) In the case of an equal total point count, the board shall be repolled to determine the final ranking of the three (3) or more finalists.

REGULATORY AUTHORITY

811 CMR 3.00: M.G.L. c. 7, s. 38J.

PLEASE SUBMIT _____ COPIES OF THIS FORM (IT MAY BE REPRODUCED)

1. PROJECT DESCRIPTION:

TITLE:

LOCATION:

2. NAME OF FIRM:
(or Joint Venture)

TYPE OF ORGANIZATION:
(Proprietorship,Partnership,Corporation,etc.)

YEAR ESTABLISHED:

ADDRESS:

FEDERAL I.D. NO:

LOCATION OF PRINCIPAL OFFICE IF OUT OF STATE:

Check here if your firm is a SOMBA certified minority (MBE) ☐ or SOMBA women-owned business enterprise(WBE) ☐

3. NAME AND TITLE OF PRINCIPAL TO CONTACT:

PHONE NUMBER:()

4a. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN YOUR FIRM TO BE ASSIGNED TO THIS PROJECT:

* Indicate Project Manager with an asterisk. Include a one page resume' of each member of your staff to be assigned to this project.

NAME AND TITLE	MASS. REG. NO.	DISCIPLINE/PROJECT ROLE
		(Architectural, Structural, Mechanical, Electrical / Principal in charge, Project Manager, Project Designer)

4b. KEY PERSONS, SPECIALISTS AND INDIVIDUALS IN CONSULTANT FIRMS TO BE ASSIGNED TO THIS PROJECT:

NAME OF PERSON/ FIRM NAME /ADDRESS	MASS. REG. NO.	DISCIPLINE/PROJECT ROLE
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5. FULL TIME PERSONNEL IN YOUR FIRM'S MASSACHUSETTS OFFICE BY DISCIPLINE:(Average number employed throughout the preceding 6 month period. Indicate both the total number in each discipline, and within brackets, the total number holding Massachusetts registrations.)

Administration	_____	Fire Protection Engineering	_____	()	Soils Engineering	_____	()
Architecture	_____	H.V.A.C Engineering	_____	()	Specification Writing	_____	()
Acoustical Engineering	_____	Interior Designing	_____	()	Structural Engineering	_____	()
Civil Engineering	_____	Landscape Architecture	_____	()	Surveying	_____	()
Ecology	_____	Life Safety Code Specialist	_____	()	Traffic Engineering	_____	()
Electrical Engineering	_____	Mechanical Engineering	_____	()	Drafting	_____	()
Energy Specialists	_____	Planning	_____	()	CADD Operators	_____	()
Environmental Engineering	_____	Sanitary Engineering	_____	()	Other	_____	()
					TOTAL PERSONNEL	_____	()

PROJECT NAME, LOCATION & DESCRIPTION	INDICATE PROJECT COST (PC), STUDY/DESIGN FEE	YEAR COMP.	PHASES *	REFERENCES NAME & PHONE
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7a. ADDITIONAL INFORMATION OR DESCRIPTION OF RESOURCES SUPPORTING YOUR FIRM'S QUALIFICATIONS FOR THIS PROJECT: (If joint venture, indicate previous experience with this joint venture.)

8. PRINCIPAL BUSINESS OF THIS FIRM AND PRINCIPAL SPECIALIZATIONS:

[illegible]

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10. List the names and addresses of all partners, if a partnership, or all officers, directors, and all persons with an ownership interest of more than five percent if the applicant is not a partnership:

	%STOCK	MASS. REG. NO.	DISCIPLINE
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11. List all current projects for which the applicant is performing or is under contract to perform any design services;

PROJECT NAME, LOCATION & DESCRIPTION	INDICATE PROJECT COST (PC), STUDY/DESIGN FEE	YEAR COMP.	PHASES *	REFERENCES NAME & PHONE
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12. Applicants are requested to submit a list of all projects for all public agencies within the Commonwealth for which the applicant has performed or has entered into a contract to perform design services within the five year period immediately preceding the filing of this application.

PROJECT NAME, LOCATION & DESCRIPTION	INDICATE PROJECT COST(PC), STUDY/DESIGN FEE	YEAR COMP.	PHASES*	REFERENCES NAME AND PHONE
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* In accordance with services authorized, i.e., study (St.), schematics (Sch.), design development (D.D.), construction documents (C.D.), administration of construction (A.C.), all phases(All).

13. I hereby certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A 1/2 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The foregoing is a statement of facts, sworn to by the undersigned under the penalties of perjury.

SIGNATURE

PRINTED NAME AND TITLE

DATE

IF ADDITIONAL SPACE IS NECESSARY, PLEASE ATTACH ADDITIONAL 8 1/2 x 11 SHEETS.